

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**



74-1070

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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DOCKET NO. 74-1070

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UNITED STATES OF AMERICA,  
Appellee,  
  
-against-  
MAX BEER,  
Defendant-Appellant.

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APPENDIX FOR APPELLANT

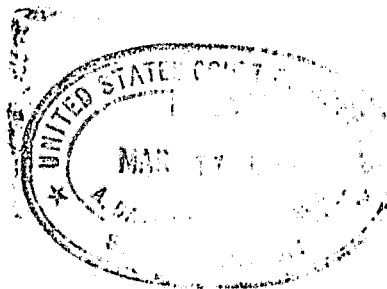
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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE EASTERN  
DISTRICT OF NEW YORK

---

LEAVY, SHAW & HORNE  
Attorneys for Appellant  
233 Broadway, Suite 4901  
New York, New York 10007

Stuart R. Shaw,  
Of Counsel



PAGINATION AS IN ORIGINAL COPY

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A

Gen.  
With

DA

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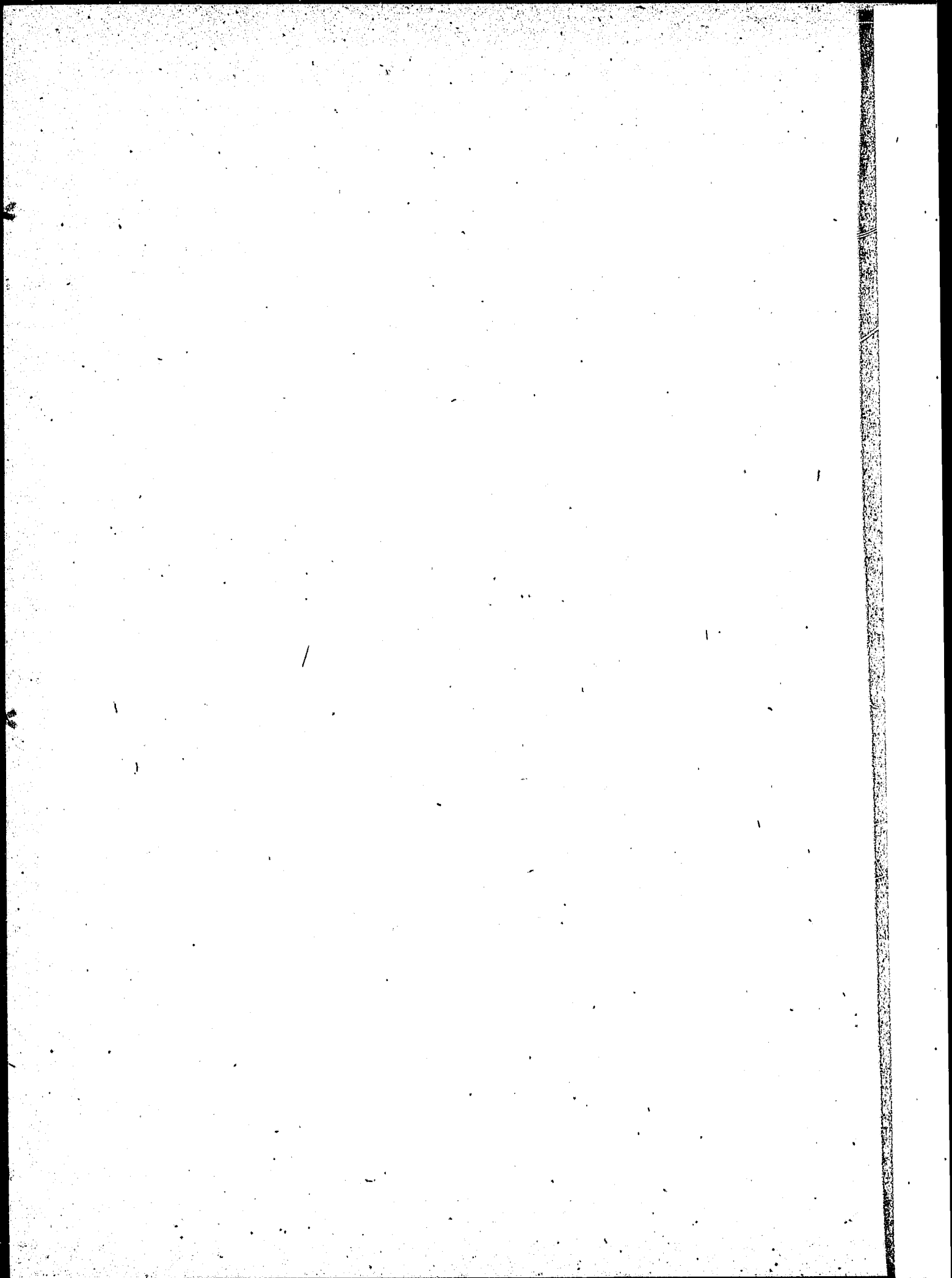


72CR 839

DATE	PROCEEDINGS
2-7-72	Before ROSLING, J. - Case called. Hearing on a motion to suppress to be heard at the time of the trial. (See memo at the bottom of the motion papers in front). - Motion for bill of particulars, discovery & inspection adjourned to 10-6-72 at 2:15 P.M.
2-1-72	By ROSLING, J. - Order filed that the motion to suppress is set for hearing to be conducted immediately before the trial (memo on bottom of motion papers in the front).
10-6-72	Before Rosling J - Case called - defts not present - adjd to 11-3-72.
11-3-72	Before Rosling J - Case called - Motion argued - granted and denied in part as indicated - court to submit Memorandum.
11-5-72	By ROSLING J - Memorandum and Order filed granting and denying defts motions as indicated - (see Order) defts may at the opening of trial or at any time during the trial renew any application for relief made in the notice of motion to which this order is addressed. (p/c mailed)
1-17-73	Govt's Bill of Particulars filed.
1-10-73	Before COSTANTINO, J. - Case called- Adjd to 5/17/73 for assignment of counsel
1-17-73	Before COSTANTINO, J. - Case called- Deft present-Court assigned Mr. Stuart Shaw atty for the deft BEER-Cse set down for trial on 7/25/73
1-29-73	Voucher for Compensation filed (A. RAMIREZ)
1-25-73	Petition for Writ of Habeas Corpus Ad Prosequendum filed.
1-25-73	By COSTANTINO, J. - Writ issued, ret. 7/25/73
1-25-73	Before COSTANTINO J - Case called - Defts & attys present - deft BEER having been advised of his rights by the court withdraws his plea of not guilty and enters a plea of guilty to count 1 - deft STRIMENOS having been advised of his rights by the court, including the Y.C.A. withdraws plea of not guilty and enters a plea of guilty to count 3 (Pail continued as to deft STRIMENOS - sentences adjd without date.
1-27-73	Writ returned, filed- Executed (Deft. Beer)
1-18-73	Magistrate's file #1268 inserted into Criminal file 72CR839.
1-23-73	Before COSTANTINO, J. - Case called- Deft and atty present- Deft STRIMENOS sentenced pursuant to 5010(B) of the Youth Corrections Act on count 3. C motion of Assistant U.S. Atty DePetrus counts 1 and 2 are dismissed.
1-23-73	Judgment and Commitment filed. Copies sent to the Marshal.
1-23-73	Before COSTANTINO, J. - Case called- Deft BEER and counsel not present-Ser adjd to 10/5/73
1-30-73	By COSTANTINO, J. - Order filed releasing bail (STRIMENOS)

PROCEEDINGS

DATE	PROCEEDINGS
10/2/73	Certified copy of Judgment and Commitment ret'd and filed - Deft delivered to Federal Detention Headquarter
10/5/73	Before COSTANTINO, J. - Case called - Sentence adj'd to 10/12/73
10-9-73	Petition For Writ of Habeas Corpus Ad Prosequendum filed (BEER)
10-9-73	By <del>ROBERT MISHLER</del> Mishler, Ch J - Writ Issued, ret. Oct. 12, 1973 (BEER)
10-12-73	Before COSTANTINO J - Case called - def't BEER & counsel Stewart Show present - def't is sentenced to imprisonment for 4 years on count 1 plus special parole of 5 years on count 1. On motion of Asst Ronald De Petris counts 2 & 3 are dismissed. Sentence is to run concurrently with sentence now being served by the def't imposed in the Southern District of NY, their file 73 CR-222.
10-12-73	Judgment & Commitment filed - certified copies to Marshal (BEER)
10-13-73	Certified copy of Judgment & Commitment ret'd and filed - def't BEER delivered to Federal Detention Headquarters.
10/16/73	Writ ret'd and filed - executed (MAX BEER)



EJB:FEW:eh  
F. #723,378

FILED  
6/29/72

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROSLING, J.

UNITED STATES OF AMERICA,

- against -

MAX BEER and PETER STRIMENOS,

Defendants.

INDICTMENT

Cr. No.  
(T. 21, USC., § 841(a)(1))  
(T. 21, USC., § 963)  
(T. 21, USC., § 952(a))  
(T. 18, USC., § 2)

THE GRAND JURY CHARGES:

72 CR 839

COUNT ONE

On or about and between the 8th day and the 12th day of June, 1972, in the Eastern District of New York, and elsewhere the defendant, MAX BEER, and the defendant, PETER STRIMENOS, knowingly and intentionally conspired to import a quantity of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, into the customs territory of the United States from St. Thomas, Virgin Islands, a place outside such territory, but within the United States, in violation of Title 21, United States Code, Section 952(a). (Title 21, United States Code, Section 963).

COUNT TWO

On or about the 12th day of June, 1972, in the Eastern District of New York, the defendant, MAX BEER, and the defendant, PETER STRIMENOS, knowingly and intentionally did import 156 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, into the customs territory

of the United States from St. Thomas, Virgin Islands, a place outside such territory, but within the United States. (Title 21, United States Code, Section 952(a); Title 18, United States Code, Section 2).

COUNT THREE

On or about the 12th day of June, 1972, in the Eastern District of New York, the defendant, MAX BEER, and the defendant, PETER STRIMENOS, knowingly and intentionally did possess with intent to distribute about 156 grams of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

A TRUE BILL.

Fred Schuler  
FOREMAN

Robert A. Morse  
UNITED STATES ATTORNEY



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MAX BELR AND PETER STRINENOS,

Defendants.

AFFIRMATION OF ATTORNEY FOR  
DISMISSAL OF INDICTMENT

72 Cr. 839

STUART R. SHAW, being an attorney duly admitted to practice in the United States District Court in the Eastern District of New York, and a partner in the lawfirm of LEAVY, SHAW & HORNE, 233 Broadway, Suites 3307 and 4901, New York, New York 10007, does hereby affirm under penalties of perjury as follows:

1. I was appointed to represent the defendant herein under the C. J. A. provisions on May 10, 1973 by the Hon. J. Constantino. At that time I was substituted for the lawfirm of RUBIN, GOLD & GELLER, 299 Broadway, New York, New York. I had been called by the A. U. S. A., <sup>Revised</sup> Mr. David A. DePutris, earlier that week to see if I was interested in receiving the appointment because I was handling my client's case by appointment on May 3, 1973 in the Southern District of New York.

2. I accepted the appointment of my client's case over ten months after he was originally indicted on June 25, 1972 before the late Hon. J. Rosling.

3. Mr. Leonard Rubin was present in court when I was appointed and continued to represent the codefendant PETER STRINENOS. I discussed the case at length with Mr. Rubin inquiring as to any and all work that had been done by his office in regard to the case. Mr. Rubin assured me that all that was legally possible and feasible had been attempted by his firm. He advised me

of the Motion to Suppress and Bill of Particulars he had filed August 3, 1972 on behalf of my client.

4. I relied on Mr. Rubin's assertions and information in regard to the fact that all legal avenues had been exhausted. I failed to move for dismissal of the indictment on the grounds that more than six months had elapsed without the prosecution bringing my client to trial because of the aforementioned reliance on previous counsel's work. On October 12, 1973 I appeared in court to represent my client on his sentence. At that time my client advised me of the fact that his case had not been prosecuted against him by the United States Attorney's Office in the Eastern District of New York within the six months requirement. I immediately brought this matter to the attention of the court and moved to dismiss the indictment. Mr. DePetris stated on the record that in fact this was not the case, that the United States Attorney's Office had always been prepared to go to trial and that it was the defendant who had delayed prosecution and had prevented the case from going forward within the six months. I stated for the record that I would withdraw any motion to dismiss relying on the word of the United States Attorney.

5. I have received several communications from my client in the last few weeks requesting that I appeal the sentence of the court on the grounds that the prosecution failed to bring his case forward within the required six months period. I have also been in contact with Leonard Rubin, my client's previous attorney, who has advised me that he was always prepared to go to trial on behalf of my client when he represented him, and that the United States Attorney did indeed fail to prosecute this case within the required six months period, and that, in his opinion, the case should be dismissed as required by law.

I feel that it is my obligation and duty to pursue my client's claims especially in the light of Mr. Rubin's assertions. I might add that Mr. William Mogulescu, an attorney with Mr. Rubin's office who worked on this

matter, also has communicated with me in this regard, substantiating Mr. Rubin's opinion. I do, however, feel that an appeal is not what is required in this matter, but that the included motion is the correct avenue to redress the wrong done to my client.

6. It is therefore counsel's feeling that the court should order the minutes of October 12, 1973 to substantiate the assertions made in this motion, and because of the fact that my client is indigent and entitled to the said minutes for free under the C. J. A. provisions.

7. Counsel has taken the liberty of enclosing a Xerox copy of all the proceedings that took place on this matter substantiating Mr. Rubin's assertion that the defense never adjourned, or prevented in any way, this matter from coming to trial within the required six months period.

WHEREFORE, counsel respectfully requests that the Honorable Court grant the motion herein and dismiss the indictment herein and vacate the sentence of my client and/or order the minutes required herein and hold a hearing in regard to counsel's motion and for such other and further relief as this Honorable Court shall deem in the interest of justice.

Dated: New York, New York  
November 7, 1973

Duly affirmed,

STUART R. SHAW, ESQ.  
LEAVY, SHAW & HORNE  
Attorneys for Defendants  
233 Broadway, Suites 3307 and 4901  
New York, New York 10007

TO: CLERK, U.S. DISTRICT COURT  
Eastern District  
Cadman Plaza  
Brooklyn, N. Y. 11201

HON. J. MARK CONSTANTINO  
United States District Court  
for the Eastern District of N. Y.  
Cadman Plaza  
Brooklyn, N. Y. 11201

HON. ROBERT A. MORSE  
United States Attorney  
Eastern District  
Cadman Plaza  
Brooklyn, N. Y. Attn: A.U.S.A. David A.  
DePetrìs

RUBIN, GOLD & GELLER  
Attorneys for Co-defendant Streminov  
299 Broadway  
New York, New York



APPENDIX D

SECOND CIRCUIT RULES REGARDING  
PROMPT DISPOSITION OF CRIMINAL CASES

5. In computing the time within which the government should be ready for trial, the following periods should be excluded:

(a) A reasonable period of delay resulting from other proceedings concerning the defendant, including but not limited to proceedings for the determination of competency and the period during which he is incompetent to stand trial, pretrial motions, interlocutory appeals, trial of other charges, and the period during which such matters are sub-judice.

(b) The period of delay resulting from a continuance granted by the district court at the request of, or with the consent of, the defendant or his counsel. The district court shall grant such a continuance only if it is satisfied that postponement is in the interest of justice, taking into account the public interest in the prompt disposition of criminal charges. A defendant without counsel should not be deemed to have consented to a continuance unless he has been advised by the court of his rights under these rules and the effect of his consent.

(c) The period of delay resulting from a continuance granted at the request of a prosecuting attorney if:

(i) the continuance is granted because of the unavailability of evidence material to the government's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will become available within a reasonable period; or

(ii) the continuance is granted to allow the prosecuting attorney additional time to prepare the government's case ' and additional time is justified by the exceptional circumstances of the case.

(d) The period of delay resulting from the absence or unavailability of the defendant. A defendant should be considered absent whenever his location is unknown and in addition he is attempting to avoid apprehension or prosecution or his location cannot be determined by due diligence. A defendant should be considered unavailable whenever his location is known but his presence for trial cannot be

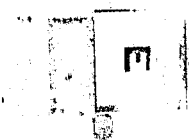
obtained by due diligence.

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant should be granted a severance so that he may be tried within the time limits applicable to his case.

(f) The period of delay resulting from detention of the defendant in another jurisdiction provided the prosecuting attorney has been diligent and has made reasonable efforts to obtain the presence of the defendant for trial.

(g) The period during which the defendant is without counsel for reasons other than the failure of the court to provide counsel for an indigent defendant or the insistence of the defendant on proceeding without counsel.

(h) Other periods of delay occasioned by exceptional circumstances.



United States District Court  
FOR THE  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.

OCT 12 1973

United States of America

v.  
MAX BEER

No. 72CR839

TIME A.M. ....  
P.M. ....

MAILED

On this 12th day of October, 1973, came the attorney for the government and the defendant appeared in person and with counsel.

It Is ADJUDGED that the defendant upon his plea of guilty and the court being satisfied that there is a factual basis for the plea has been convicted of the offense of violating T-21, U.S. Code, Sec. 963, in that on or about and between the 8th day and 12th day of June, 1972, the defendant with another, knowingly and intentionally conspired to import a quantity of cocaine hydrochloride, a Schedule 11 narcotic drug controlled substance, into the customs territory of the U.S. from St. Thomas, Virgin Islands, a place outside such territory but within the U.S.

as charged, in Count 1 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is ADJUDGED that the defendant is guilty as charged and convicted.

It Is ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 4 years on count 1 and special parole of 5 years on count 1. On motion of Asst. U.S. Atty. De Petris counts 2 and 3 are dismissed. Sentence to run concurrently with the sentence imposed in the Southern District of New York in case number 73 CR-222 which defendant is now serving.

the copy serve as the commitment of the

*Walter P. Smith*  
United States District Judge.

Clerk.

Insert "by [name of counsel], counsel" or "without counsel"; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant has stated that he waived the right to the assistance of counsel." Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. Insert "in count(s) number \_\_\_\_\_." Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term; (3) any other outstanding unserved sentence; (4) whether defendant is to be further imprisoned with payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. Enter any order with respect to the defendant's release from custody. The Court may recommend a particular institution.